

EMERGENCY  
**City of Cincinnati**

ZDS

**An Ordinance No. \_\_\_\_\_**

- 2022

AWB

**AUTHORIZING** the City Manager to execute a *Property Transfer and Development Agreement* with the Board of County Commissioners of Hamilton County, Ohio, pursuant to which the City will vacate and convey a portion of the public right-of-way known as Logan Street in the Over-the-Rhine neighborhood of Cincinnati in connection with the construction of a public parking garage.

WHEREAS, the Board of County Commissioners of Hamilton County, Ohio (the "County") owns certain real property consisting of approximately 0.915 acres of real property in the Over-the-Rhine neighborhood of Cincinnati, which property is currently bifurcated by a portion of the public right-of-way known as Logan Street (the "City ROW"), as more particularly described and depicted in the *Property Transfer and Development Agreement* (the "Agreement") attached to this ordinance as Attachment A (the "Property"), which is under the management and control of the City's Department of Transportation and Engineering ("DOTE"); and

WHEREAS, the County desires to purchase the City ROW from the City to consolidate with the County's adjoining real property (collectively, the "Project Site"), and thereafter construct a public parking garage consisting of approximately 515 parking spaces, at an estimated total project cost of \$19,200,000 (the "Garage Project") on the consolidated Project Site; and

WHEREAS, as a material inducement to the City to vacate and convey the City ROW to the County, the County has agreed to, among other things, construct a street that will be dedicated as right-of-way for use by the general public, as more particularly described in the Agreement (the public street and associated public sidewalks and/or other public improvements (including, without limitation, any infrastructure required in support of the Garage Project and surrounding area by Greater Cincinnati Water Works ("GCWW"), Stormwater Management Utility ("SMU"), the Metropolitan Sewer District of Greater Cincinnati ("MSD"), or any other public utility) being referred to collectively herein as the "Infrastructure Project"; and together with the Garage Project, the "Project"); and

WHEREAS, the City's Real Estate Services Division has determined, by appraisal, that the fair market value of the City ROW is approximately \$56,350; however, to facilitate the Project and promote its economic feasibility, the City is willing to vacate the City ROW as public right-of-way and convey it to the County for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits that equal or exceed the fair market value of the City ROW because (i) the Project will create employment opportunities and stimulate economic growth and development of other property in the area; (ii) the Garage Project will provide additional public parking for the Over-the-Rhine neighborhood, including in support of the City-owned Findlay Market House and surrounding businesses and residents; and (iii) the City

will receive the benefit of the Infrastructure Project, including the new street connecting Logan Street and Central Parkway; and

WHEREAS, the County has delivered to the City an Attorney's Certificate of Title certifying that the County is the owner of all of the property that abuts the City ROW; and

WHEREAS, if applicable, all necessary abutters will have consented to the City's vacation and sale of the City ROW to the County by executing and delivering Quitclaim Deeds prior to the City Manager vacating and conveying the City ROW to the County; and

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution and research; and

WHEREAS, pursuant to Chapter 723 of the Ohio Revised Code, the legislative authority of a municipal corporation may convey the fee simple estate or other interest in land used for streets if it has determined that the City ROW is not needed for municipal purposes and that the sale will not be detrimental to the general interest; and

WHEREAS, the City Manager, being the officer having the custody and control of the City ROW, and upon verification from DOTE, MSD, GCWW, and SMU, has determined that the City ROW is not needed for transportation or other municipal purposes, that there is good cause for vacating the City ROW as public right-of-way, and that such vacation will not be detrimental to the general interest; and

WHEREAS, pursuant to Section 723.041 of the Ohio Revised Code, any affected public utility, including, without limitation, MSD, GCWW, SMU, Duke Energy, and Cincinnati Bell, shall be deemed to have permanent easements in the City ROW for their existing utility facilities, if any; and

WHEREAS, the City has determined that it is in the best interest of the City to eliminate competitive bidding in connection with the sale of the City ROW because the City desires to vacate and convey the City ROW to the County to facilitate the Project; and

WHEREAS, City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's sale of the City ROW at its meeting on September 17, 2021; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute a *Property Transfer and Development Agreement*, in substantially the form attached to this ordinance as Attachment A (the

“Agreement”), pursuant to which the City will vacate and convey to the Board of County Commissioners of Hamilton County, Ohio (the “County”) a portion of the public right-of-way known as Logan Street north of Elder Street in the Over-the-Rhine neighborhood of Cincinnati (the “City ROW”), for the County to (a) consolidate with adjoining property the County owns (together with the City ROW, the “Project Site”), and (b) construct a public parking garage consisting of approximately 515 parking spaces at the consolidated Project Site, at an estimated total project cost of approximately \$19,200,000 (the “Project”).

Section 2. That the fair market value of the City ROW, as determined by appraisal by the City’s Real Estate Services Division, is approximately \$56,350; however, the City is agreeable to conveying the City ROW to the County for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits that equal or exceed the fair market value of the City ROW because (a) the Project will create employment opportunities and stimulate economic growth and development of other property in the area; (b) the Project will provide additional public parking for the Over-the-Rhine neighborhood, including in support of the City-owned Findlay Market House and surrounding businesses and residents; and (c) the County has agreed to construct a new street and corresponding public infrastructure improvements to create access between Logan Street and Central Parkway.

Section 3. That the City ROW is not needed for transportation or other municipal purposes, and that the vacation and sale of the City ROW (subject to the creation of utility easements for existing utilities, if any, as provided for under Section 723.041, Ohio Revised Code) will not be detrimental to the general interest.

Section 4. That eliminating competitive bidding in connection with the City’s sale of the City Row is in the best interest of the City because the County owns and controls the adjoining

property, and consolidation of the City ROW with the remainder of the Project Site is necessary for the County to undertake the Project.

Section 5. That proceeds from the sale of the City ROW shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City’s Real Estate Services Division in connection with the sale, and that the City’s Finance Director is hereby authorized to deposit amounts in excess thereof into Miscellaneous Permanent Improvement Fund 757.

Section 6. That the City Manager and other City officials are authorized to take all necessary and proper actions to carry out the provisions of this ordinance and the Agreement, including, without limitation, executing any and all ancillary agreements, amendments, deeds, plats, terminations, releases, and other documents.

Section 7. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to expedite the parties’ execution of the Agreement, so that the County can move forward with the Project without delay, enabling the City ROW to be put to its highest and best use, for the economic benefit of the City, at the earliest possible time.

Passed: \_\_\_\_\_, 2022

\_\_\_\_\_  
Aftab Pureval, Mayor

Attest: \_\_\_\_\_  
Clerk

ATTACHMENT A

Contract No. \_\_\_\_\_

**PROPERTY TRANSFER AND DEVELOPMENT AGREEMENT**

*between the*

**CITY OF CINCINNATI**

*and*

**BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO**

Project Name: Findlay Market County Parking Garage

(sale/vacation of portion of Logan Street for consolidation with County property  
for construction of public parking garage in vicinity of Findlay Market)

Dated: \_\_\_\_\_, 2022

## PROPERTY TRANSFER AND DEVELOPMENT AGREEMENT

This Property Transfer and Development Agreement (this "**Agreement**") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and the **BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO**, acting for and on behalf of Hamilton County, Ohio, a political subdivision of the State of Ohio, the address of which for purposes of this Agreement is County Administration Building, 138 E. Court Street, Room 603, Cincinnati, Ohio 45202 (the "**County**").

### Recitals:

A. The County has or intends to obtain site control over approximately 0.915 acres of real property in the Over-the-Rhine neighborhood of Cincinnati located between Central Parkway on the west, Campbell Street on the east, and Elder Street on the south, as the same is shown on Exhibit A (Site Plan) hereto (the "**Project Site**").

B. The Project Site is currently bifurcated by a portion of Logan Street north of Elder Street, as more particularly described on Exhibit B (Legal Description – City ROW) and depicted on Exhibit C (Survey Plat – City ROW) hereto (the "**City ROW**"), which is under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

C. The County desires to acquire the City ROW for consolidation with the remainder of the Project Site, upon which consolidated Project Site the County intends to undertake a redevelopment project consisting of the design and construction of a public parking garage consisting of approximately 515 parking spaces, as more particularly described on Exhibit D (Statement of Work) hereto, at an estimated total project cost of approximately \$19,200,000, as more particularly described on Exhibit E (Budget) hereto (the "**Garage Project**").

D. In addition to and in support of the Garage Project, the County intends to (i) construct a street that will be open to the general public, which is depicted on Exhibit A as "Logan Access Street", in accordance with plans and specifications that will be reviewed and approved by DOT, (ii) rehabilitate the public streets adjacent to or adjoining the Project Site following completion of the Garage Project, and (iii) complete a Traffic Impact Study and implement any further DOT recommendations or requirements in response thereto, all as more particularly described on Exhibit D hereto, at an estimated total project cost of approximately \$1,052,000, as more particularly described on Exhibit E hereto (the public street and associated public sidewalks and/or other public improvements (including, without limitation, any infrastructure required in support of the Garage Project and the surrounding area by Greater Cincinnati Water Works, Stormwater Management Utility, the Metropolitan Sewer District of Greater Cincinnati, or any other public utility) being referred to collectively herein as the "**Infrastructure Improvements**" or the "**Infrastructure Project**", as applicable; the Infrastructure Project and the Garage Project are referred to collectively herein as the "**Project**").

E. The County currently anticipates that it will (i) commence on-site construction of the Garage Project no later than April 1, 2022 (the "**Garage Project Commencement Date**"); and (ii) complete construction of (a) the Infrastructure Project no later than July 1, 2023 (the "**Infrastructure Project Completion Date**"), and (b) the Garage Project no later than July 1, 2023 (the "**Garage Project Completion Date**").

F. The City's Real Estate Services Division has determined, by professional appraisal, that the approximate fair market value of the City ROW is \$56,350; however, the City is willing to sell the City ROW for less than fair market value, namely, for \$1.00, because the City will receive economic and non-economic benefits exceeding such fair market value in connection with the Project, including (i) the benefit of the Infrastructure Improvements, including the new street connecting Logan Street to Central Parkway, which the County intends to dedicate for use by the general public, (ii) additional parking in support of the City-

owned Findlay Market House and surrounding businesses and residents, and (iii) urban redevelopment of Over-the-Rhine.

G. Pursuant to Chapter 723 of the Ohio Revised Code, the legislative authority of a municipal corporation may convey the fee simple estate or other interest in land used for streets if it has determined that the property is not needed for municipal purposes.

H. Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State of Ohio, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution, and research.

I. The City has determined that (i) in consultation with the City's Department of Community and Economic Development ("DCED") and DOTE, the City ROW is not needed for transportation or other municipal purposes; and (ii) it is in the best interest of the City to eliminate competitive bidding in connection with the City's sale of the City ROW because the City ROW is necessary in order for the County to undertake the Garage Project.

J. In connection with City Council's passage of the ordinance authorizing the vacation and sale of the City ROW to the County, the County provided the City with (i) an Attorney's Certificate of Title from [ \_\_\_\_\_ ], an Ohio licensed attorney, certifying that the City, the County, and [ \_\_\_\_\_ ] are the owners of all of the property that abuts the City ROW, and (ii) the written consent of all necessary abutting property owners.

K. The City, upon recommendation of DCED, believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements and for this reason the City desires to facilitate the Project by entering into this Agreement.

L. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the vacation and transfer of the City ROW at its meeting on September 17, 2021.

M. Execution of this Agreement was authorized by Ordinance No. \_\_\_\_-2022, passed by City Council on December \_\_\_\_\_, 2022.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Purchase Price.** Subject to the terms and conditions set forth herein, the City hereby agrees to vacate and transfer the City ROW to the County, and the County hereby agrees to acquire the City ROW from the City, for a purchase price of \$1.00 (the "Purchase Price"). The County acknowledges that it is familiar with the condition of the City ROW and, at the Closing (as defined below), the City shall convey the City ROW to the County in "as is" condition. The City makes no representations or warranties to the County with respect to the condition of the City ROW and, from and after the Closing, the City shall have no liability of any kind to the County for any defects, adverse environmental condition, or any other matters affecting the City ROW.

2. **Closing and Conditions to Closing.**

(A) **Conditions.** The Closing on the City's sale of the City ROW to the County shall not occur unless each of the following conditions has been satisfied, including any and all other conditions as may be identified in the City's Coordinated Report #CR26-2021, including those conditions outlined in Section 11 below (collectively, the "Conditions"); *provided, however*, that if the City, in its sole and absolute discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City's Deed (as defined below) or handle such Conditions post-Closing. The County shall perform all work and investigations and shall obtain and prepare all necessary documents pertaining to the satisfaction of the Conditions, at no cost to the City.



- (i) *Due Diligence Investigations*: County's approval of its due diligence inspections with respect to the City ROW, including, without limitation, title, survey, and environmental assessments of the City ROW;
- (ii) *Budget*: The County shall have provided to the City a detailed and updated budget for the Project;
- (iii) *Construction Schedule*: The County shall provide to the City a detailed construction timeline showing anticipated construction commencement and completion dates for the Project, including significant milestones;
- (iv) *Sale Plats and Legal Descriptions*: The parties' approval of all required sale plats, surveys, and new legal descriptions (including residual descriptions, if any) as needed to legally create the City ROW on the tax maps of the Hamilton County Auditor;
- (v) *Dedication Plat*: The County shall have filed a Dedication Plat, approved by the City, with the Hamilton County Recorder's Office, thereby dedicating to public right-of-way forever, the Infrastructure Improvements; and
- (vi) *Other Information*: Such other information and documents pertaining to the County or the Project as the City may reasonably require.

(B) Copies of Due Diligence Items to be Provided to City. Without limitation of the County's other obligations under this Agreement, prior to the Closing, and as such due diligence items are obtained by the County, the County, at no cost to the City, shall provide DCED with copies of the inspection, engineering, and environmental reports, title reports, surveys, and other materials prepared by third party professionals obtained by the County prior to the Closing that pertain to the Project.

(C) Right to Terminate. If prior to the Closing, either party determines, after exercising reasonable good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period of time, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all of the Conditions have not been satisfied to the satisfaction of both parties or waived in writing and for that reason the Closing has not occurred as of March 1, 2022, the City, in its sole and absolute discretion, may terminate this Agreement and all rights and obligations of the parties hereunder by giving written notice thereof to the County.

(D) Closing Date. The closing on the City's sale of the City ROW to the County (the "Closing") shall take place on approximately [\_\_\_\_], 202[ ], or on such earlier or later date upon which the parties may mutually agree.

(E) Closing Costs and Closing Documents. At the Closing, (i) the County shall pay the Purchase Price in full, and (ii) the City shall convey all of its right, title, and interest in and to the City ROW to the County by Quitclaim Deed substantially in the form of Exhibit F (Form of Quitclaim Deed) hereto (the "**City's Deed**"). The County shall pay all conveyance fees, recording fees, title exam fees, title insurance premiums, settlement fees, and any and all other closing costs associated with the Closing, such that the City shall not be required to come up with any funds for the Closing. There shall be no proration of real estate taxes and assessments at the Closing, and from and after the Closing, the County and its successors-in-title shall pay all real estate taxes and assessments thereafter becoming due on the City ROW. At the Closing, the parties shall execute a closing statement and any and all other customary closing documents that are necessary for the Closing (except that the City shall not be required to execute a title affidavit or the like). Pursuant to Section 301-20 of the Cincinnati Municipal Code, at the Closing, the County shall pay to the City any and all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed by the County or any of its affiliated entities. The provisions of this Agreement shall survive the City's execution and delivery of the City's Deed and shall not be deemed to have been merged therein.

(F) Maintenance of Property Between Closing and Prior to Construction. Between the Closing and the County's commencement of on-site construction on the City ROW, the County, at no expense to the City, shall maintain the City ROW in presentable condition, including keeping the site reasonably free of debris and other unsightly materials.

(G) Environmental Remediation. As a material inducement to the City to enter into this Agreement, the County does hereby agree that, with respect to any environmental condition on or otherwise affecting the Project Site, including, without limitation, the City ROW and the property on which the Infrastructure Improvements will be located, that exists at or prior to the time of the City's execution of this Agreement (herein, a "**Pre-existing Environmental Condition**"), and regardless of whether or not such Pre-existing Environmental Condition is described in any environmental assessment or any other environmental report that may have been previously furnished by the County to the City or otherwise obtained by the City, the County shall, at no expense to the City, promptly take all steps necessary to remediate such Pre-existing Environmental Condition, within a reasonable time after discovery, to the satisfaction of the City's Office of Environment and Sustainability ("**OES**"). The County's remediation obligation under this paragraph shall survive the completion of the Project.

**3. Construction Commencement and Completion; Reconveyance of Property to City upon Failure to Timely Commence Construction.**

(A) Construction Commencement & Completion.

(i) Infrastructure Project. Following Closing, the County shall (a) (1) apply for and receive the required street opening and utility construction permits from DOTE, the public utilities, and other relevant agencies and departments for construction of the Infrastructure Project, and (2) promptly thereafter commence construction of the Infrastructure Project in accordance with City-approved plans and specifications; and (b) complete construction, in accordance with City-approved plans and specifications and all other City approvals, of the Infrastructure Project (as evidenced by DOTE's written approval to open the street associated therewith to public traffic) no later than the Infrastructure Project Completion Date.

(ii) Garage Project. Following Closing, the County shall (a) (1) apply for and receive the required building permits from the City's Department of Buildings and Inspections ("**B&I**") for construction of the Garage Project, and (2) commence on-site construction of the Garage Project in accordance with City-approved plans and specifications ("**Construction Commencement**") no later than the Garage Project Commencement Date; and (b) complete construction, in accordance with City-approved plans and specifications and all other City approvals, of the Garage Project (as evidenced by a certificate of occupancy for the garage) no later than the Garage Project Completion Date.

(B) Reacquisition Option for Failure to Timely Commence Construction of Garage Project. If Construction Commencement has not occurred on or before the Garage Project Commencement Date, then, at any time thereafter, the City shall have the option to reacquire the City ROW for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the "**Reacquisition Option**"), exercisable by giving written notice thereof to the County at any time after the Garage Project Commencement Date, but prior to the date of Construction Commencement.

(C) Reacquisition Option Closing. If the City elects to exercise the Reacquisition Option, the reconveyance of the City ROW to the City pursuant to the Reacquisition Option shall take place on the date specified in the City's notice of election. On the date of reconveyance: (i) the County shall reconvey the City ROW (including any and all improvements located thereon) to the City or its designee in the same condition as presently exists, reasonable wear and tear and damage by the elements excepted (and under no circumstances shall the City be required to pay for the value of any improvements made by the County to the City ROW); (ii) County shall pay all customary closing costs associated with such reconveyance (e.g., conveyance fees, transfer tax, recording fees) such that the City shall not be required to come up with any funds at the closing for the re-conveyance; and (iii) real estate taxes and assessments shall be prorated as of the date of the reconveyance. The provisions of paragraphs (B)-(C) hereof shall be reflected in the City's Deed.

(D) Plans and Specifications. The County shall design and construct the Project in accordance with City-approved plans and specifications that are consistent with Exhibit D, including, without limitation, the County's proposed site plan for driveway locations, parking, stormwater detention, public access

easement(s), and other ancillary improvements. Once the City has approved the County's plans and specifications, the County shall not make any material changes thereto without the City's prior written consent.

(E) Dedication and Acceptance of Infrastructure Improvements. The parties acknowledge that, upon completion, the County intends to dedicate the Infrastructure Improvements for public use, and intends for the City to accept the Infrastructure Improvements (subject to all approvals as required by DOTE, OES, and City Planning Commission, and subject to the passage by Cincinnati City Council of an ordinance to accept the dedication). The County shall prepare all survey plats, legal descriptions, and other documents as may be required by the City and the Hamilton County Auditor and Recorder in connection with such dedication and acceptance, all at no cost to the City. The County acknowledges that, (i) if the County does not construct the Infrastructure Improvements in accordance with DOTE requirements, the City may refuse to accept the dedication of the Infrastructure Improvements, and (ii) the City makes no guarantee that City Planning Commission will approve the dedication or that Cincinnati City Council will pass an ordinance to accept the dedication.

(F) Contractors and Subcontractors. The County shall not solicit bids from any contractors or subcontractors who are identified as being debarred by the federal or state government or who are identified as being debarred on the City's Vendor's Performance list.

(G) Applicable Laws. The County shall obtain, pay for, and maintain all necessary street-opening permits, building permits and other permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances and other governmental requirements applicable to the Project, including, without limitation, those set forth on Exhibit G (Additional Requirements) hereto. The City makes no representations or other assurances to the County that the County will be able to obtain whatever variances, permits, or other approvals from B&I, DOTE, other City departments, City Planning Commission, or City Council that may be required in connection with the Project.

(H) Inspection of Work. During construction of the Project and the related improvements, the City, its employees and agents shall have the right at all reasonable times to inspect the progress of construction to determine whether the County is complying with its obligations under this Agreement. If the City determines that the work is not substantially in accordance with the City-approved plans and specifications or other requirements of this Agreement, is not in compliance with all applicable laws, or is not performed in a good and workmanlike manner, the City shall have the right, in its reasonable judgment and after giving the County reasonable prior written notice thereof, to stop such work and order its replacement at the County's expense.

(I) Reporting During Construction. Upon the City's request throughout construction, the County shall provide the City with reports describing the status of the Project, including, without limitation, information about whether the Project is on budget and on schedule and containing such additional pertinent information thereto as the City may from time to time reasonably request. The County shall submit a final report to the City upon completion of the Project.

(J) Fees and Expenses. The County acknowledges and agrees that it is subject to any and all standard City fees and permit costs applicable to the Project.

#### **4. Insurance.**

(A) Insurance. Throughout construction, the County shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$1,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of 100% of the value of the improvements to be constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by the County's construction lenders, and (v) such other insurance as may be reasonably required by the City's Division of Risk Management. The County's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to

do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least 30 days prior written notice to the City.

(B) **Waiver of Subrogation.** The County hereby waives all claims and rights of recovery, and on behalf of the County's insurers, rights of subrogation, against the City, its employees, agents, contractors, and subcontractors with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by the County, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors, or subcontractors; it being the agreement of the parties that the County shall at all times protect against such loss or damage by maintaining adequate insurance. The County shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

5. **Casualty; Eminent Domain.** If the Project or the Project Site is damaged or destroyed by fire or other casualty during construction, or if any portion of the Project Site is taken by exercise of eminent domain (federal, state, or local), the County shall repair and restore the affected property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which it was in immediately prior to such occurrence. For the avoidance of doubt, the City currently has no plans to take the property by eminent domain. To the extent the City's participation is required, the City and the County shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the proceeds are insufficient to fully repair and restore the affected property, the City shall not be required to make up the deficiency. The County shall handle all construction in accordance with the applicable requirements set forth herein, including, without limitation, obtaining the City's approval of the plans and specifications if they deviate from the original City-approved plans. The County shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the improvements are being repaired or restored.

6. **Default; Remedies.**

(A) **Default.** The occurrence of any of the following shall be an "event of default" under this Agreement:

(i) the failure of the County to perform or observe any obligation, duty, or responsibility under this Agreement or any other agreement to which the County and the City are parties, and failure by the County to correct such failure within 30 days after the County's receipt of written notice thereof from the City (the "Cure Period"); *provided, however*, that if the nature of the default is such that it cannot reasonably be cured during the Cure Period, the County shall not be in default under this Agreement so long as the County commences to cure the default within the Cure Period and thereafter diligently completes such cure within a reasonable period of time (but not exceeding 90 days) after the County's receipt of the City's initial notice of default. Notwithstanding the foregoing, if the County's failure to perform or observe any obligation, duty, or responsibility under this Agreement creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if the County fails to take corrective action immediately upon discovering such dangerous condition or emergency; or

(ii) the dissolution of the County, the filing of any bankruptcy or insolvency proceedings by or against the County, the making by the County of an assignment for the benefit of creditors, the appointment of a receiver (temporary or permanent) for the County, or the attachment of, levy upon, or seizure by legal process of any of the property of the County; or

(iii) any representation, warranty, or certification of the County made in connection with this Agreement or any other related agreements or documents shall prove to have been false or materially misleading when made.

(B) **Remedies.** Upon the occurrence of an event of default under this Agreement, the City shall be entitled to: (i) terminate this Agreement by giving the County written notice thereof, (ii) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of the County, and (iii) exercise any and all other rights and

remedies under this Agreement or otherwise available at law or in equity. The County shall be liable for all costs and damages, including, without limitation, attorneys' fees, suffered or incurred by the City as a result of a default of the County under this Agreement or the City's enforcement or termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

7. **Notices.** All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by UPS, Federal Express or other recognized courier service, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses below or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City:

City of Cincinnati  
Dept of Community & Economic Development  
805 Central Avenue, Suite 700  
Cincinnati, Ohio 45202

To the County:

Board of County Commissioners  
of Hamilton County  
135 E. Court Street, Room 603  
Cincinnati, Ohio 45202

If the County sends a notice to the City alleging that the City is in default under this Agreement, the County shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, Ohio 45202.

If the City sends a notice to the County alleging that the County is in default under this Agreement, the City shall simultaneously send a copy of such notice by U.S. certified mail to: Hamilton County Prosecuting Attorney, 230 E. Ninth Street, Suite 4000, Cincinnati, Ohio 45202.

8. **Representations, Warranties, and Covenants.**

(A) The County makes the following representations, warranties, and covenants to induce the City to enter into this Agreement:

(i) The County is duly organized and validly existing under the laws of the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws relevant to the transactions contemplated by this Agreement.

(ii) The County has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has by proper action been duly authorized, executed, and delivered by the County and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid and binding obligations of the County.

(iii) The County's execution, delivery, and performance of this Agreement and the transactions contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or the County's organizational documents, or any mortgage, contract, agreement, or other undertaking to which the County is a party or which purports to be binding upon the County or upon any of its assets, nor is the County in violation or default of any of the foregoing.

(iv) There are no actions, suits, proceedings, or governmental investigations pending, or to the knowledge of the County, threatened against or affecting the County, at law or in equity or before or by any governmental authority that, if determined adversely, would impair the financial condition of the County or its ability to perform its obligations with respect to the matters contemplated herein.

(v) The County shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute, or governmental proceedings or investigation affecting the County that could reasonably be expected to materially and adversely affect its completion of the Project.

(vi) The statements made in the documentation provided by the County to the City that are descriptive of the County or the Project have been reviewed by the County and to the best of the knowledge of the Board of County Commissioners do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.

(vii) The Board of County Commissioners is unaware of any outstanding fines, penalties, judgments, water, or other utility charges or other amounts owed to the City by the County.

(B) The City makes the following representations, warranties, and covenants:

(i) The City is duly organized and validly existing under the laws of the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws relevant to the transactions contemplated by this Agreement.

(ii) The City has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has by proper action been duly authorized, executed, and delivered by the City and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid and binding obligations of the City.

(iii) The City's execution, delivery, and performance of this Agreement and the transactions contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or the City's organizational documents, or any mortgage, contract, agreement, or other undertaking to which the City is a party or which purports to be binding upon the City or upon any of its assets, nor is the City in violation or default of any of the foregoing.

#### **9. Reporting Requirements.**

(A) Submission of Records and Reports; Records Retention. The County shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to the County, the Project, or this Agreement, including, without limitation, financial statements, information pertinent to the determination of finances of the Project, and such reports and information as may be required for compliance with programs and projects relating to the Project as may be funded by the City, Hamilton County, or the State of Ohio (collectively, "**Records and Reports**"). All Records and Reports compiled by the County and furnished to the City shall be in such form as the City reasonably may from time to time require. The County shall retain all Records and Reports for a period of 3 years after the completion of the Project.

(B) City's Right to Inspect and Audit. During construction of the Project and for a period of 3 years thereafter, the County shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit the County's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by the County to the City, the County shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

#### **10. General Provisions.**

(A) Assignment. The County shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which shall not be unreasonably withheld, and any attempt to do so without the City's consent shall, at the City's option, render this Agreement null and void.

(B) Entire Agreement. This Agreement (including the exhibits hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations, or agreements, written or oral, between them respecting the subject matter hereof.

(C) Amendments and Waivers. This Agreement may be amended, waived, or otherwise modified only by a written amendment signed by both parties.

(D) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and the County agrees that venue in such court is proper. The County hereby waives trial by jury with respect to any and all disputes arising under this Agreement.

(E) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal, or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) No Third-Party Beneficiaries. The parties hereby agree that no third-party beneficiary rights are intended to be created by this Agreement.

(I) No Brokers. The County represents to the City that it has not dealt with a real estate broker, salesperson, or other person who might claim entitlement to a fee or other compensation from either party as a result of the parties' execution of this Agreement.

(J) No Recording. This Agreement shall not be recorded in the Hamilton County Recorder's Office.

(K) Time. Time is of the essence with respect to the performance by the County of its obligations under this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements, and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements, or obligations shall be deemed to be a representation, warranty, covenant, agreement, or obligation of any present or future officer, agent, employee, or attorney of the City in other than his or her official capacity.

(M) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the Project shall have any personal financial interest, direct or indirect, in the County or in the Project, and the County shall take appropriate steps to assure compliance.

(N) Administrative Actions. To the extent permitted by applicable laws, and unless otherwise expressly provided in this Agreement, all actions taken or to be taken by the City under this Agreement may be taken by administrative action and shall not require legislative action of the City beyond the legislative action authorizing the execution of this Agreement.

(O) Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

**11. Coordinated Report Conditions.** The County shall abide by the additional conditions identified in Coordinated Report #, including, without limitation, the following:

(A) DOTE. The County must complete a Traffic Impact Study (“TIS”) and implement any recommendations of the TIS and any DOTE requirements related thereto, including to create public access to exit the remainder of Logan Street. Adjacent streets must be finished with a curb, sidewalk, and/or drive approach, each to be approved by DOTE. A street opening permit, obtained by a DOTE licensed street contractor, is required for all private improvements in the public right of way. All improvements in the public right of way must be built to City standards, policies, and guidelines. Application for permits may be made at Room 425, City Hall, 801 Plum Street. Two sets of plan drawings must be attached to the permit application for review by DOTE.

(B) MSD. An Excavation Fill permit approval and/or bond from the Metropolitan Sewer District of Greater Cincinnati (“MSD”) may be necessary for any construction, construction traffic, earthwork, or other construction activity related to the Project. Additional MSD requirements may be established by the permit (such as verification and usage of existing or abandoned building services to the combined sewer through dye testing, pre- and post-construction CCTV-ing, etc.) depending on the final Project plans and specifications. Information will be needed from the Project to ensure no new loads are exerted on public sewers.

(C) GCWW. The County shall perform all work described in Preliminary Application CIN 332 to the satisfaction of Greater Cincinnati Water Works (“GCWW”), including the relocation of existing GCWW infrastructure located under the City ROW.

(D) Duke Energy. Duke Energy has an OH Primary, a standard pressure gas main, and overhead and underground facilities to which access must be maintained at all times.

(E) Cincinnati Bell. Cincinnati Bell has existing underground telephone facilities that must remain in place, in service, and accessible. Any damage done to the facilities, or any work done to relocate the facilities as a result of the Project, shall be handled entirely at the County’s expense.

**12. Exhibits.** The following exhibits are attached hereto and made a part hereof:

- Exhibit A – Site Plan
- Exhibit B – Legal Description – City ROW
- Exhibit C – Survey Plat – City ROW
- Exhibit D – Statement of Work
- Exhibit E – Budget
- Exhibit F – Form of Quitclaim Deed
- Exhibit G – Additional Requirements

**[signature pages follow]**



This Agreement is executed by the parties on the dates indicated below their respective signatures, effective as of the later of such dates (the "Effective Date").

**BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2022

**[City signatures on the following page]**

**CITY OF CINCINNATI**

By: \_\_\_\_\_  
John P. Curp, Interim City Manager

Date: \_\_\_\_\_, 2022

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

Certified Date: \_\_\_\_\_

Fund/Code: \_\_\_\_\_

Amount: \_\_\_\_\_

By: \_\_\_\_\_  
Karen Alder, City Finance Director

**Exhibit A**  
to Property Transfer and Development Agreement

**Site Plan**

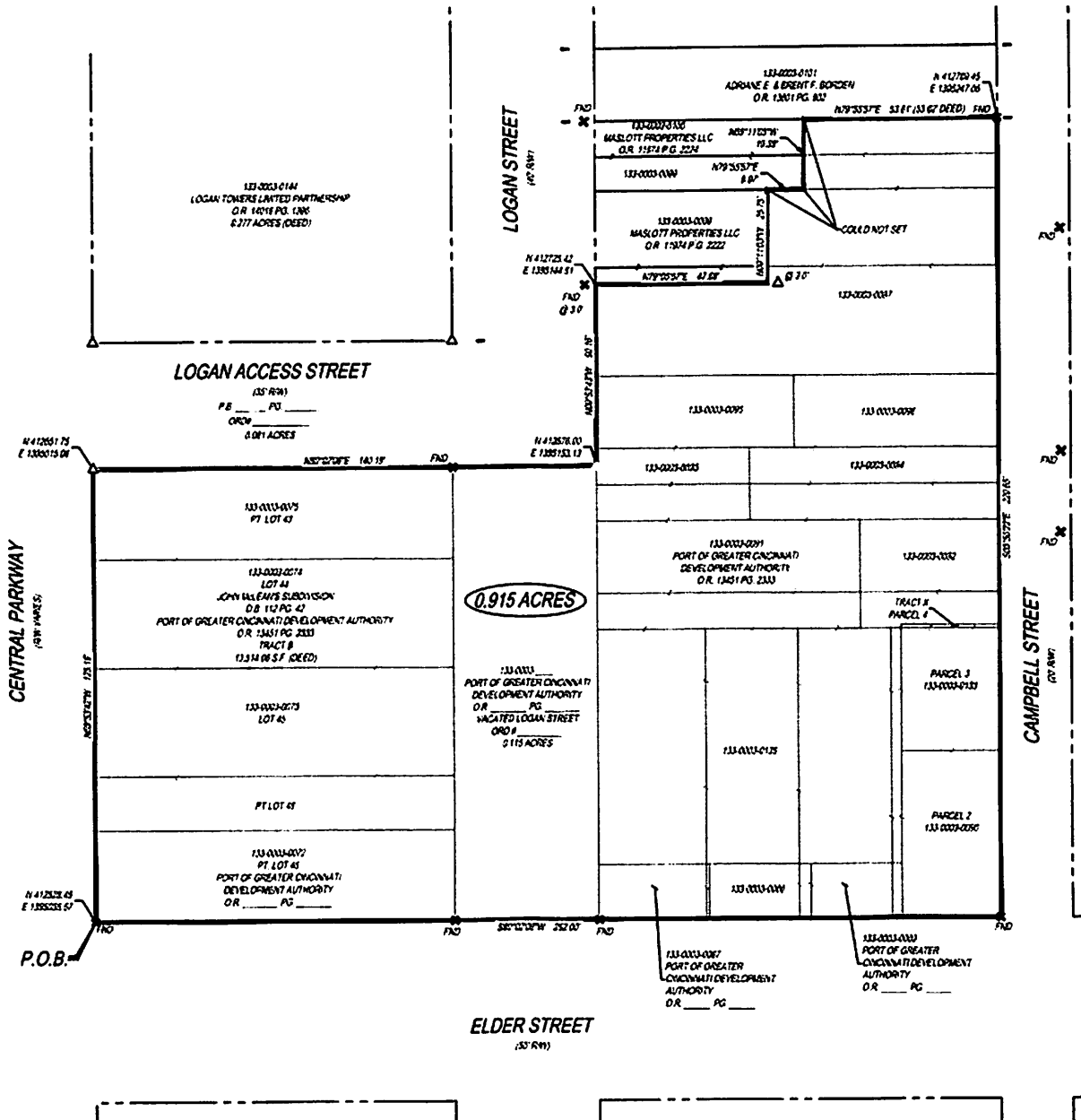


Exhibit B  
to Property Transfer and Development Agreement

*Legal Description – City ROW*

Situated in Section 13, Town 3, Fractional Range 2, BTM, Millcreek Township, City of Cincinnati, Hamilton County, Ohio, being a portion of Logan Street, the boundary of which being more particularly described as follows:

Beginning at a cross notch found at the intersection of the north right of way line of Elder Street with the west right of way line of Logan Street;

Thence with said west right of way line, N09°53'43"W a distance of 125.16 feet to a cross notch set;

Thence, N80°02'08"E a distance of 40.00 feet to a 5/8" iron pin set in the east right of way line of Logan Street;

Thence along said east right of way line, S09°53'43"E a distance of 125.16 feet to a cross notch found at the intersection of said east right of way line with the aforementioned north right of way line of Elder Street;

Thence, S80°02'08"W a distance of 40.00 feet to the Point of Beginning.

Containing 0.115 acres of land, more or less.

Bearings are based on the Ohio State Plane Coordinate System South Zone as derived from the Ohio Department of Transportation's Virtual Reference Stationing System (VRS)(NAD 83)

All iron pins set are 5/8" diameter x 30" iron rebar with ID cap stamped "Kleingers".

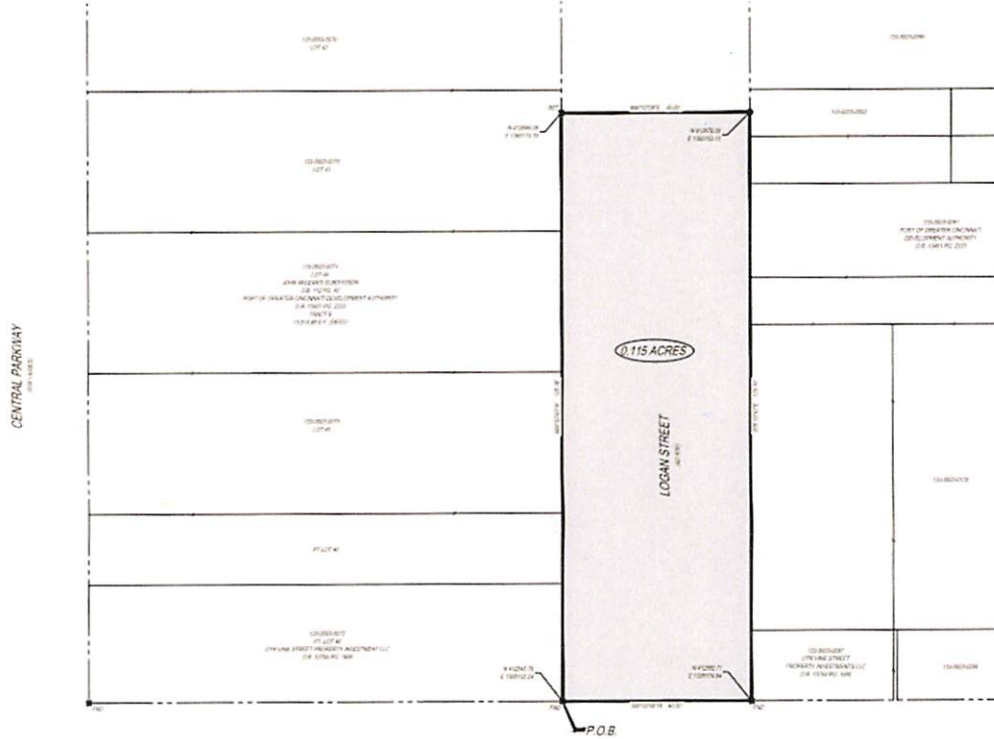
Exhibit C  
to Property Transfer and Development Agreement  
*Survey Plat – City ROW*

SEE ATTACHED

INSPIRED PEOPLE CREATIVE DESIGN TRANSFORMING COMMUNITIES

LEGEND

- SET BACK PERMIT
- EASEMENT
- EASEMENT
- EASEMENT
- EASEMENT
- EASEMENT



CLOSURE 0.115 ACRES

NORTH 40°15'00" EAST 100.00 FT  
 QUADRA 11.1 AC  
 COURSE N 87° 45' 00" E LENGTH 45.00 FT  
 NORTH 40°15'00" EAST 100.00 FT

QUADRA 11.1 AC  
 COURSE N 87° 45' 00" E LENGTH 45.00 FT  
 NORTH 40°15'00" EAST 100.00 FT

QUADRA 11.1 AC  
 COURSE N 87° 45' 00" E LENGTH 45.00 FT  
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QUADRA 11.1 AC  
 COURSE N 87° 45' 00" E LENGTH 45.00 FT  
 NORTH 40°15'00" EAST 100.00 FT

QUADRA 11.1 AC  
 COURSE N 87° 45' 00" E LENGTH 45.00 FT  
 NORTH 40°15'00" EAST 100.00 FT



NOTES

1. SOURCE OCCUPANTS AS NOTED
2. OCCUPANTS IN GENERAL ARE SUBJECT
3. DEMONSTRATION IS IN FULL COMPLIANCE WITH ALL APPLICABLE RULES
4. ALL WORK SHALL BE DONE IN ACCORDANCE WITH ALL APPLICABLE RULES
5. ADDITIONAL NOTES ARE BASED ON THE FIELD NOTES AND COORDINATE SYSTEM
6. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF
7. TRANSFORMATIONS ARE BASED ON THE NATIONAL GRID SYSTEM

SURVEYOR'S CERTIFICATION

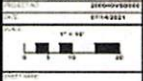
I HEREBY CERTIFY THAT THE PLAT OF SURVEY WAS PREPARED UNDER MY  
 SUPERVISION AND IN ACCORDANCE WITH THE CONSTITUTION AND LAWS OF THE STATE OF OHIO  
 AND I AM A LICENSED SURVEYOR IN THE STATE OF OHIO. ALL REQUIREMENTS  
 HAVE BEEN MET TO THE BEST OF MY KNOWLEDGE.

DATE: 10/15/2024  
 SURVEYOR: [Signature]

PLANNING COMMISSION APPROVAL  
 PLAT APPROVED BY THE CITY OF FINDLAY PLANNING COMMISSION ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2024

FINDLAY CITY CLERK  
 DIRECTOR, DEPARTMENT OF CITY ADMINISTRATION

SURVEY PLAT FOR  
 A PORTION OF  
 LOGAN STREET  
 0.115 ACRES  
 SECTION 13, TOWN 5, R. 1 BTM  
 WILBERCE TOWNSHIP  
 CITY OF FINDLAY  
 HAMILTON COUNTY, OHIO



FINDLAY GARAGE

1 OF 1

Exhibit D  
to Property Transfer and Development Agreement

*Statement of Work*

Following the Closing on the City's sale of the City ROW to the County, the County will complete construction of the following public improvements and a 515-space structured parking garage.

- I. Demolition: Demolition of existing surface parking lots, roadway, sidewalks, lighting, and signage located within the Project Site.
  
- II. Site Preparation:
  - a. Prepare the Project Site for installation of infrastructure and vertical development, including, without limitation, shoring, soil stabilization, and grading activities.
  - b. General conditions, including jobsite fencing, road and sidewalk closing fees, and surveying.
  
- III. Public Infrastructure Improvements:
  - a. To prepare the Project Site for vertical development, the County will first construct a new public street, being approximately 35' wide and designed to Department of Transportation & Engineering standards, that will connect Central Parkway to the existing Logan Street.
  - b. Abandon a portion of the City-owned right-of-way known as Logan Street, including the relocation of utilities, water, sewer, gas, and electric to the new public street to be constructed between Central Parkway and Logan Street.
  - c. Streetscape, sidewalk, and signage improvements in the adjacent public rights of way, including, without limitation, granite curbs and concrete sidewalks to match the south side of Elder Street, post top street lighting, signage, and tree wells.  
Upon completion of the Garage Project, the County shall complete the rehabilitation of the public streets adjoining or adjacent to the Project Site, or otherwise impacted by the Project, all per DOTE requirements.
  
- IV. Public Parking Garage:
  - a. Construct an above-grade, 6.5 story public parking garage located along the north side of Elder Street, east of Central Parkway (the "**Garage**"). The Garage will have a capacity of approximately 515 spaces, a footprint of 30,256 square feet, and a total building area of 194,500 square feet. There will be one vehicular entry/exit along the north side of the Garage.
  - b. The Garage will also include approximately 15,000 square feet of retail space and accompanying support space on the ground level. The retail space will be designed as a "white box" level of finish, including major HVAC and electrical utility runs only, slab on grade, and exterior walls of the space.
  - c. Architectural finishes are incorporated into the perimeter façade to break down the scale of the Garage and relate to the surrounding Over-the-Rhine historical buildings. A 4-story mural will be incorporated into the section of the south façade above the vacated section of Logan Street.

Exhibit E  
to Property Transfer and Development Agreement

*Budget*

1. **PRELIMINARY BUDGET**

<b>Uses</b>		<b>Total</b>
<b>Infrastructure Project</b>		<b>1,052,000.00</b>
Utility Relocation	1,000,000.00	
Logan Access Street	52,000.00	
<b>Garage Project</b>		<b>19,200,000.00</b>
Land Acquisition	2,200,000.00	
Deep Foundations	1,000,000.00	
Core & Shell	16,000,000.00	
<b>Soft Costs</b>		<b>2,500,000.00</b>
<b>Total</b>		<b>\$22,752,000.00</b>

2. **SOURCES OF FUNDS**

<b>Sources</b>		<b>Total</b>
<b>County Parking Fund Revenues</b>		<b>\$22,752,000.00</b>



Exhibit F  
to Property Transfer and Development Agreement  
*Form of Quitclaim Deed*

SEE ATTACHED



This conveyance was authorized by Ordinance No. \_\_\_\_-2022, passed by Cincinnati City Council on \_\_\_\_\_, 2022.

Executed on \_\_\_\_\_, 20\_\_.

CITY OF CINCINNATI

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OHIO            )  
                                      ) SS:  
COUNTY OF HAMILTON )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department  
801 Plum Street, Suite 214  
Cincinnati, Ohio 45202

Exhibit A  
to Quitclaim Deed

*Legal Description*

Situated in Section 13, Town 3, Fractional Range 2, BTM, Millcreek Township, City of Cincinnati, Hamilton County, Ohio, being a portion of Logan Street, the boundary of which being more particularly described as follows:

Beginning at a cross notch found at the intersection of the north right of way line of Elder Street with the west right of way line of Logan Street;

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Thence, N80°02'08"E a distance of 40.00 feet to a 5/8" iron pin set in the east right of way line of Logan Street;

Thence along said east right of way line, S09°53'43"E a distance of 125.16 feet to a cross notch found at the intersection of said east right of way line with the aforementioned north right of way line of Elder Street;

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Containing 0.115 acres of land, more or less.

Bearings are based on the Ohio State Plane Coordinate System South Zone as derived from the Ohio Department of Transportation's Virtual Reference Stationing System (VRS)(NAD 83)

All iron pins set are 5/8" diameter x 30" iron rebar with ID cap stamped "Kleingers".

Exhibit B  
to Quitclaim Deed

*Survey Plat*

**[TO BE ATTACHED TO EXECUTION VERSION]**

Exhibit G  
to Property Sale and Development Agreement

*Additional Requirements*

The phrase "Developer" shall refer to the County for purposes of this Exhibit.

Developer and Developer's general contractor shall comply with all applicable statutes, ordinances, regulations, and rules of the government of the United States, State of Ohio, County of Hamilton, and City of Cincinnati (collectively, "**Government Requirements**"), including the Government Requirements listed below, to the extent that they are applicable. Developer hereby acknowledges and agrees that (a) the below listing of Government Requirements is not intended to be an exhaustive list of Government Requirements applicable to the Project, Developer, or Developer's contractors, subcontractors or employees, either on the City's part or with respect to any other governmental entity, and (b) neither the City nor its Law Department is providing legal counsel to or creating an attorney-client relationship with Developer by attaching this Exhibit to the Agreement.

Notwithstanding the provisions of this Agreement and this Exhibit:

(A) The City acknowledges that Developer has an economic inclusion policy pertaining to the inclusion of minority, female and small business enterprises, and non-discrimination, as well as its own procurement and competitive bidding policy. Developer shall use its best efforts, and shall require each contractor and subcontractor working on the Project to use its best efforts, to promote Developer's economic inclusion policy. In consideration of those efforts, the City hereby waives compliance with the City's Small Business Enterprise policy, the City's Equal Employment Opportunity Program, construction workforce goals, and procurement policy (each of which policies and programs are described more fully below) with respect to the Project.

(B) Notwithstanding clause (A) above, **Developer specifically agrees that, regardless of the legal applicability or inapplicability of Ordinance No. 130-2002 (regarding Meet and Confer), as described in Section (A)(i) of this Exhibit, Developer shall fully comply with the meet and confer requirement identified in clause (A)(i)(b) of this Exhibit as if Ordinance No. 130-2002 applies to Developer.** The City affirms to Developer that Meet and Confer meetings occur twice monthly at the offices of the Department of Community and Economic Development; to the extent such meetings occur less frequently than bi-monthly, Developer shall not be obligated to wait to bid for longer than two weeks for a Meet and Confer meeting to take place.

A. Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Conferring with Trade Unions.

(a) Applicability. Per City of Cincinnati, Ordinance No. 130-2002, this requirement is limited to transactions in which Developer receives City funds or other assistance (including, but not limited to, the City's construction of public improvements to specifically benefit the Project, or the City's sale of real property to Developer at below fair market value).

(b) Requirement. This Agreement may be subject to the requirements of City of Cincinnati, Ordinance No. 130-2002, as amended or superseded, providing that, if Developer receives City funds or other assistance, Developer and its general contractor, prior to the commencement of construction of the Project and prior to any expenditure of City funds, and with the aim of reaching comprehensive and efficient project agreements covering all work done by Developer or its general contractor, shall meet and confer with: the trade unions representing all of the crafts working on the Project, and minority, female, and locally-owned contractors and suppliers potentially involved with the construction of the Project. At this meeting, Developer and/or its general contractor shall make available copies of the scope of work and if prevailing wage rates apply, the rates pertaining to all proposed work on the Project. Not later than ten (10) days following Developer and/or its general contractor's meet and confer activity,

Developer shall provide to the City, in writing, a summary of Developer and/or its general contractor's meet and confer activity.

**B. Compliance with Small Business Enterprise Program.** The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code ("CMC") Section 323-1-S, "SBEs"). Pursuant to CMC Section 323-11, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Developer shall use its best efforts and take affirmative steps to achieve the City's goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City's Department of Economic Inclusion. The Developer may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. The Developer shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

(i) Including qualified SBEs on solicitation lists.

(ii) Assuring that SBEs are solicited whenever they are potential sources.

The Developer must conduct an advertising campaign designed to reach all segments of the Cincinnati community by advertising in newspapers, trade association publications, special interest publications, trade journals, community papers or other media (i.e. emails), as applicable.

(iii) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.

(iv) If any subcontracts are to be let, the Developer shall require the prime contractor (if different from the Developer) to take the above affirmative steps.

(v) Prior to the commencement of work under any subcontracts, the Developer shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Developer shall update the report monthly.

(vi) The Developer shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting such information as may be requested from time to time by the City.

**C. Remedies for Noncompliance with Small Business Enterprise Program.** Failure of the Developer or its contractors and subcontractors to take the affirmative steps specified in Section B and Section 8(L) of this Agreement, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Developer to use its best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this Section. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

**D. Wage Enforcement.**

(i) Applicability. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the Cincinnati Municipal Code (the "**Wage Enforcement Chapter**"). The Wage Enforcement Chapter was then amended by Ordinance No. 96-2017, passed May 17, 2017. As amended, the Wage Enforcement Chapter imposes certain requirements upon persons entering into agreements with the City whereby the City provides an incentive or benefit that is projected to exceed \$25,000, as described more particularly in the Wage Enforcement Chapter. CMC Section 326-5 requires that the language below be included in contracts subject to the Wage Enforcement Chapter.

(ii) Required Contractual Language. Capitalized terms used, but not defined, in this clause (ii) have the meanings ascribed thereto in the Wage Enforcement Chapter.

(a) This contract is or may be subject to the Wage Enforcement provisions of the Cincinnati Municipal Code. These provisions require that any Person who has an Agreement with the

city or with a Contractor or Subcontractor of that Person shall report all Complaints or Adverse Determinations of Wage Theft and Payroll Fraud (as each of those terms is defined in Chapter 326 of the Cincinnati Municipal Code) against the Contractor or Subcontractors to the Department of Economic Inclusion within 30 days of notification of the Complaint or Adverse Determination.

(b) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to include provisions in solicitations and contracts regarding a Development Site that all employers, Contractors or Subcontractors performing or proposing to perform work on a Development Site provide an initial sworn and notarized "Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee and, within 30 days of an Adverse Determination or Complaint of Wage Theft or Payroll Fraud, shall provide an "Amended Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee.

(c) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to authorize, and does hereby specifically authorize, any local, state or federal agency, court, administrative body or other entity investigating a complaint of Wage Theft or Payroll Fraud against the Person (collectively "investigative bodies") to release to the City's Department of Economic Inclusion any and all evidence, findings, complaints and determinations associated with the allegations of Wage Theft or Payroll Fraud upon the City's request and further authorizes such investigative bodies to keep the City advised regarding the status of the investigation and ultimate determination. If the investigative bodies require the Person to provide additional authorization on a prescribed form or in another manner, the Person shall be required to provide such additional authorization within 14 days of a request by the City.

(d) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall include in its contracts with all Contractors language that requires the Contractors to provide the authorizations set forth in subsection (c) above and that further requires each Contractor to include in its contracts with Subcontractors those same obligations for each Subcontractor and each lower tier subcontractor.

(e) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall post a conspicuous notice on the Development Site throughout the entire period work is being performed pursuant to the Agreement indicating that the work being performed is subject to CMC Chapter 326, Wage Enforcement, as administered by the City of Cincinnati Department of Economic Inclusion. Such notice shall include contact information for the Department of Economic Inclusion as provided by the department.

(f) Under the Wage Enforcement provisions, the city shall have the authority, under appropriate circumstances, to terminate this contract or to reduce the incentives or subsidies to be provided under this contract and to seek other remedies, including debarment.